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ABSTRACT

The suspension of Pennsylvania's educational employees due to declining enrollment is examined in this paper. The controversy over whether teacher suspension should be based on seniority or on evaluation criteria has resulted in intervention by the judicial system to establish legal precedents for reduction-in-force policy. Methodology is based on analysis and synthesis of 20 Pennsylvania court cases in the following areas: definition of declining enrollment; procedures for realignment; methods of determining seniority; litigation resulting from the Pennsylvania Teacher Efficiency Rating System; legal procedures regarding teacher reduction-in-force; collective bargaining agreements as related to teacher suspension; and the limited role of the judicial system in teacher reduction-in-force policy. Findings emphasize the necessity of establishing a proactive, concise reduction-in-force policy based on sound legal precedents at the school district level. A table of cited cases is included. (LMI)

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THE SUSPENSION OF EDUCATIONAL EMPLOYEES DUE TO DECLINING ENROLLMENT (REDUCTION-IN-FORCE) AS PRIMARILY CONSIDERED IN PENNSYLVANIA SCHOOLS

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INTRODUCTION

During the past fifteen years, as in other periods of educational history, the decline of school enrollments has created a need to suspend public school teachers. While many laymen and educators believe that the concept of teacher reduction-in-force is unique to the mid-197[illegible]'s and the 1980's, in actuality, such reductions have occurred on several occasions throughout the twentieth century. In particular, the late-1930's and early-1940's and the mid-1950's were periods in which teacher suspensions due to declining enrollment became necessary.

Faced with the need to reduce staff members, state legislatures and most local school boards have enacted precise proceedures to be followed in such situations. The Pennsylvania Tenure Act of 1937 provided that, "The Board of School Directors may suspend the necessary number of professional employees in each teaching assignment where a decrease in pupil population occurs. Such teacher suspensions shall occur in the inverse order of their appointment to such assignment."[1]

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1. Act of April 6, 1937, P.L. 213, Section 2; referenced in Walker v. School District Of City Of Scranton, 12 A.2d 46, 47 (Pa. 1940).

Because of its validity under the Common Law, and its frequent directive by state statutes, seniority has generally been regarded as the most common means of determining employee suspension. However, in 1949, as part of the complete revision of the Pennsylvania Public School Code of 1911, a system was incorporated into the Pennsylvania Statutes whereby scores on teacher efficiency rating cards (as developed by the Pennsylvania Department of Education) became the method of determining how teachers should be suspended within a teaching assignment or academic department. (These efficiency ratings, as completed by the local school district superintendent, became commonly known as the DEBE-333 form.) However, where differences in efficiency ratings were not found to be "substantial" (and "substantial" was never defined by neither the Pennsylvania General Assembly nor the Pennsylvania Department of Education), accumulated seniority was to prevail. To the pleasure of the Pennsylvania Supreme Court (it indirectly condemned the system in one of its opinions), the efficiency rating system was repealed by the Pennsylvania Legislature in November of 1979, and a return to teacher suspensions based solely on inverse seniority was reinstated.

Beyond the aforementioned Pennsylvania Statutes, the remaining procedures relating to the suspension of educational employees due to declining student enrollment have either been expressed or implied to the local school boards. Some of the

conflicts local boards have had to resolve include - what constitutes declining enrollment; by what means should seniority be determined, particularly when seniority of employees is equal; and how should teacher realignment be implimented? Consequently, in attempting to resolve these questions, a substantial body of litigation relative to these areas has been created.

The ensuing pages of this document will examine the suspension of educational employees due to declining enrollment. Because the proceedures followed for suspension of teachers vary from state to state, mostly Pennsylvania Court cases have been reviewed for this discussion. While generalities about teacher reduction-in-force might be drawn on a national level regarding American education, the intent of this paper is to concentrate on the critical material facts regarding teacher suspensions primarily under applicable Pennsylvania Statutes and procedures.

ANALYSIS AND SYNTHESIS OF CASES

The following discussion of the suspension of educational employees due to declining enrollment is based on the findings of twenty varied court cases. In most instances, the cases were the result of suit brought against a school district by a suspended employee(s) in an attempt to reinstate his/her position(s). In many of the cases reviewed, the actions of local school boards in suspending an employee(s) was affirmed. However, in some instances, the local board did err, and relief was granted to the educational employee(s) by the courts.

Defining Declining Enrollment

A frequent question presented to the courts in a variety of forms has been - what constitutes declining enrollment? In the earliest case studied, Jones v. Holes,[2] the Supreme Court of Pennsylvania had to determine whether or not a decrease in enrollment in various courses, but not an overall decrease in school population, constituted a declining enrollment situation. The Court ruled in the affirmative, therefore allowing the school district in question to suspend teachers under the declining enrollment provisions of the

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2. Jones v. Holes, 6 A.2d 102 (Pa. 1939).

Pennsylvania Tenure Laws. It based its reasoning on the concern of the Court that, "If we sustain appellant's contention, we not only 'freeze' the discretion accorded to school boards in their control over the courses of study, but stagnate development in our [the Commonwealth's] educational policies."[3]

In three cases studied, questions were raised as to whether the reasons for suspension of certain employees was indeed due to declining student enrollment or due to financial constraints within a district. In the first case, Platko v. Laurel Highlands School District,[4] six teachers claimed that their suspensions were not due to declining enrollment, but due to economic restraints of the Laurel Highlands School District. The Commonwealth Court of Pennsylvania ruled that, so long as the District had substantial evidence to conclude that declining enrollment was the cause of their financial situation, it would only intervene if a decision had been made arbitrarily or capriciously by the Board. The Court concluded that substantial evidence (a reduction of student population by 1,000 students in a one-year period) was the basis of the Board's actions.

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3. Id. at 104.

4. Platko v. Laurel Highlands School District, 410 A.2d 960 (Pa. Cmwlth. 1980).

In a similar situation, the Commonwealth Court was asked to determine whether or not loss of federal funding for a particular program constituted grounds for dismissal under the Pennsylvania Tenure Laws.[5] In the instant case, the plaintiff teacher was employed by a guidance consortium (comprised of local member school districts) and served as a counselor for a joint vocational-technical school. Upon loss of federal grants, the guidance component of vocational-technical education was eliminated. The Commonwealth Court upheld the action, stating that the elimination of the guidance component was well within the right of schools to suspend teachers due to "curtailment or alteration of the educational program" as specified in the Pennsylvania Public School Code regarding suspension of professional employees.[6]

Having ruled previously on the aforementioned cases, the Commonwealth Court did little more than briefly uphold its previous decisions when a question of teacher suspension due to economic restraint as opposed to declining enrollment was again presented to it in Andresky v. West Allegheny School District.[7] In this case the decrease of overall student

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5. Cadonic v. Northern Area Special Purpose Schools, 426 A.2d 186 (Pa. Cmwlth. 1981).

6. Id. at 189.

7. Andresky v. West Allegheny School District, 437 A.2d 1075 (Pa. Cmwlth. 1981).

enrollment of 400 students created the suspension of eleven teachers. The professional employees claimed that the decrease was not substantial, and that their suspensions were actually caused by a financial dilema created by the School Board. (The Board had not initially intended to furlough any teachers until it received considerable objections from taxpayers regarding a milage increase based on a tentative budget. The final budget was revised, the milage increase was lessened, and consequently, eleven teachers were suspended.) However, the Commonwealth Court affirmed the actions of the West Allegheny School Board, stating that what was or was not a significant decrease in enrollment was not the Court's concern, so long as the conclusions of the Board were based on substantial evidence.

While the Commonwealth Court has considered the previous dilema on a case-by-case basis, the Supreme Judicial Court of Massachusetts held in Boston Teachers Union, Local 66, v. School Committee of Boston,[8] that, "Although the quoted provision [of Massachusetts school laws regarding teacher suspension] applies only to dismissals caused by declining enrollments, general economy and efficient use of scarce funds are analogous considerations in the decision to reduce

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8. Boston Teachers Union, Local 66, v. School Committee of Boston, 434 N.E.2d 1258 (Mass. 1982).

staff size."[9] No doubt the previous ruling has done much to clarify, in Massachusetts, the validity of financial crises as a reason to invoke the declining enrollment provisions of teacher suspension guidelines.

In addition to the previous argument raised - whether financial constraints which caused declining student enrollment were proper reasons for teacher suspension - the courts have also had to intervene in other cases considering what exactly constituted declining enrollment. In Hixson v. Greater Latrobe School District,[10] the Commonwealth Court was presented with a situation where, as a result of teacher reduction-in-force, an industrial arts teacher had been transferred to the social studies department. That teacher had never taught social studies previously, and at the end of the school year, it was mutually agreed by both the teacher and school officials that his social studies teaching endorsement would be voluntarily deleted. Such was approved by the Pennsylvania Department of Education, and the former industrial arts teacher was returned to the industrial arts department, thereby causing the suspension of Charles Hixson. The Commonwealth Court reversed the decision of the Greater Latrobe School District stating that, in actuality, Hixson's suspension

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9. Id. at 1267.

10. Hixson v. Greater Latrobe School District, 421 A.2d 474 (Pa. Cmwlth. 1980).

was not directly caused by declining enrollment, but was due to the internal realignment of school personnel. All employee suspensions due to declining enrollment had been accomplished the previous school year through the transfer of the industrial arts teacher to the social studies department. Suspension of a teacher due to realignment is not permitted under the provisions of the Pennsylvania Public School Code.

A recent case centered upon an elementary school principal who had been returned to classroom teaching due to the closing of an elementary school because of declining student enrollment.[11] However, out of six elementary principals, the principal transferred was not the individual with the least amount of seniority. The Moon Area School District contended that, in this instance, the return to the classroom of the elementary principal was a "demotion", and therefore, seniority need not be a consideration of the School Board. The principal argued that his return to the classroom was a "reassignment and realignment of professional staff", and therefore was subject to the seniority procedures required by the Pennsylvania Public School Code. The Commonwealth Court, in reversing the Board's actions stated, "We must reject the District's contention that it had no duty to realign its professional staff

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11. Appeal of Cowden, 486 A.2d 1014 (Pa. Cmwlth. 1984).

on the basis of seniority since the personnel changes involved here did not encompass the suspension of any District employees."[12] Therefore, as no employees were suspended, all transfers were considered to be realignments.

Procedures for Realignment

Disagreements regarding procedures for realignment have been another cause for litigation in reduction-in-force situations. In a 1956 case,[13] the Pennsylvania Supreme Court indicated that, when staff reductions are required, a school board's first consideration should be to retain those teachers with the most years of service. However, a district does not have to realign its staff in order to preserve seniority, when such realignment is impractical.[14] Likewise, the Commonwealth Court will not substitute its judgement for what is educationally practical or impractical.[15]

In Fatscher v. Board Of School Directors Of Springfield School District, Springfield, Delaware County,[16] the

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12. Id. at 1016.

13. Welsko v. School Board Of The School District Of The Township Of Foster, Luzerne County, 119 A.2d 43 (Pa. 1956).

14. Platko v. Laurel Highlands School District, 410 A.2d 960 (Pa. Cmwlth. 1980).

15. Id.

16. Fatscher v. Board Of School Directors Of Springfield School District, Springfield, Delaware County, 417 A.2d 287 (Pa. Cmwlth. 1980).

Commonwealth Court noted that it is well within the powers of a local school board to completely disregard seniority when an overwhelming educational need exists. Similar to the previously mentioned case, the Commonwealth Court again stated that it would not determine what was an overwhelming educational need.[17]

However, in Board Of School Directors Of Chester-Upland School District v. Ashby,[18] the Commonwealth Court did not allow the District to disregard seniority in order to staff its middle school. The Chester-Upland School District, faced with declining student enrollment, furloughed six elementary school teachers, all of which had more seniority than a number of middle school teachers. The elementary school teachers claimed that, as either elementary or secondary subject certification is permissible to teacher in a middle school according to Pennsylvania certification guidelines, they should have been transferred to the middle school in place of six middle school teachers with less seniority. The Commonwealth Court confirmed the ruling of the Court of Common Pleas of Delaware County, which stated that, "Suspension of professional school district employees should be based solely upon seniority within the school district, not experience

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17. Id.

18. Board Of School Directors Of Chester-Upland School District v. Ashby, 495 A.2d 665 (Pa. Cmwlth. 1985).

in a given class or level of education, provided that all of the employees possess the same certification."[19] In affirming the lower court's reasoning, the Commonwealth Court did not find valid the District's argument that loss of a substantial number of middle school teachers, and replacing them with teachers unfamiliar with middle school procedures, would create a serious disruption to the middle school program.

The Supreme Court of New Jersey, Appellate Division, in Klinger v. Board Of Education Of Township Of Cranbury, Middlesex County,[20] upheld a reduction plan implemented by the Cranbury Board of Education which eliminated all full-time teaching positions in the physical education department, and replaced them with part-time employees. Richard Klinger was the senior of two physical education teachers in the District. Prior to the 1979-1980 school year, Klinger was informed that he and the other full-time physical education teacher would both be reduced to a 3 1/2 days per week schedule, and would receive 7/10 of a full-time salary. Klinger contended that, as the senior physical education teacher, he should have been retained full-time, and the other physical education teacher should have been reduced

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19. Id. at 666.

20. Klinger v. Board Of Education Of Township Of Cranbury, Middlesex County, 463 A.2d 948 (N.J. Super. A.D. 1982).

to a part-time schedule. The New Jersey Commissioner of Education agreed with Klinger's arguments and ordered him reinstated. However, the New Jersey State Board of Education reversed the decision of the Commissioner, and the Superior Court likewise affirmed the State Board of Education's ruling. The Court held, "When the board abolished all full-time physical education teaching positions, there were no positions to which petitioner had a superior right by reason of seniority. The fact that it [the Board] preferred two teachers instead of one is of no concern of the courts, and so long as petitioner was not treated inferiorly upon reduction-in-force, he has no legitimate complaint."[21]

In three cases reviewed, suspended teachers included in their arguments realignment plans by which to regain a teaching position. Generally, these plans have been disregarded by the courts, unless denial of the plan by a local board was done in an arbitrary or capricious manner lacking substantial evidence.

In Proch v. New Castle Area School District,[22] the Commonwealth Court was satisfied that substantial evidence existed to demonstrate that the suspended teacher's

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21. Id. at 950.

22. Proch v. New Castle Area School District, 430 A.2d 1034 (Pa. Cmwlth. 1981).

realignment plan was impractical. As the District had adequate evidence to deny the plan, the Court would not intervene. Likewise, in Andresky v. West Allegheny School District,[23] the Commonwealth Court affirmed that a school Board is not required to realign its staff if it is not educationally practical.

However, in Beeman v. Board of Education, Oyster Bay-East Norwich Public Schools,[24] the Supreme Court, Appellate Division of New York ruled that, "If there was another tenured elementary school teacher available in the district, who was assigned to classroom duty but who also was certified to teach either special education or remedial reading, then the board had the obligation to determine whether it was feasible to rearrange the teaching schedules to preserve petitioner's tenure rights over those of the appellant teacher or other less senior faculty members."[25] In this case, Jane Beeman was suspended from her elementary school teaching position. Two tenured faculty members with less seniority than Beeman were retained on the staff of the Oyster Bay-East Norwich Public Schools, but were transferred to teach either special education

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23. Andresky v. West Allegheny School District, 437 A.2d 1075 (Pa. Cmwlth. 1981).

24. Beeman v. Board Of Education, Oyster Bay-East Norwich Public Schools, 494 N.Y.S.2d 27 (A.D.2 Dept. 1985).

25. Id. at 29.

or remedial reading. The two transferred teachers held certification in those areas and Jane Beeman did not. Nonetheless, Beeman claimed that other teachers in the District with less seniority than her could have been transferred to other special areas in order to allow Beeman to retain her elementary teaching position. Obviously, the Court's ruling indicated that Beeman's realignment suggestions should be implemented, if the School Board found such transfers educationally feasible.

Oftentimes, teacher plans for realignment based solely on seniority suggest the transfer of individuals who do not hold certificates in common with the teacher presenting the realignment proposal. The Pennsylvania Commonwealth Court held in James v. Big Beaver Falls Area School District[26] that, "Where the complaining teacher seeks to displace another teacher on the basis of the other's certification in an area not shared by the complaining teacher, the ... provision of mandatory realignment based upon blind adherence to seniority is not required."[27] Obviously, the Commonwealth Court's consistent attempts to not interfere with educational decision making have again been reinforced through the aforementioned case.

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26. James v. Big Beaver Falls Area School District, 511 A.2d 900 (Pa. Cmwlth. 1986).

27. Id. at 903.

In a similar situation to James v. Big Beaver Falls Area School District,[28] the Supreme Court of Rhode Island determined a concordant conclusion.[29] Three elementary school teachers were suspended from their positions due to declining elementary enrollment. Citing Rhode Island Statutes regarding a declining enrollment crisis, the petitioners claimed that teacher suspensions had to be based on a seniority system. Several elementary school teachers in the District possessed secondary mathematics certification, and the petitioners contended that those teachers should have been transferred to the high school to replace the high school mathematics teachers with lesser seniority. Transfers in accordance with this plan would have thereby created elementary teaching positions for the petitioners. The Court held, "The decline in student population occurred within the elementary grades. It is therefore reasonable ... that such suspensions should come from within the elementary grades ... It is clear from the petitioners' argument that the bumping procedure they advocate could result in disruption throughout the school system and thereby adversly affect students' education.[30]

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28. Id.

29. Gallison v. Bristol School Committee, 493 A.2d 164 (R.I. 1985).

30. Id. at 166-167.

Methods of Determing Seniority

Once the courts have ruled in a case regarding whether or not a declining enrollment situation exists in a school district, they are often requested to solve disputes regarding methods of seniority determination. The Commonwealth Court, in Platko v. Laurel Highlands School District,[31] held that it was indeed lawful for the District to compute seniority by the order in which an individual teacher's employment approval appeared on the school board agenda. Use of such methods in instances where seniority was completely equal constituted a legitimate procedure by the Board so long as all seniority determinations were made in this manner.

Similar to the previous case, the School District in Rochester Area School Board v. Duncan[32] determined seniority of all of its teachers based upon their date of employment, not their first date of work for the District. The Commonwealth Court also upheld this system as a valid means of determining seniority, so long as its application was consistent to all professional employees. The Court would not support the claims of the suspended teacher that the Board

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31. Platko v. Laurel Highlands School District, 410 A.2d 960 (Pa. Cmwlth. 1980).

32. Rochester Area School Board v. Duncan, 529 A.2d 48 (Pa. Cmwlth. 1987).

had acted arbitrarily or capriciously by its use of employment date.

Andresky v. West Allegheny School District[33] was a case resulting from the argument of eleven teachers that seniority had incorrectly been computed by the District. Several of the teachers claimed that two teachers who had taken maternity leaves during the previous school year had lost their rights to accumulate seniority and therefore should be suspended prior to the furlough of the plaintiffs. At the time the suit was filed against the District, the Pennsylvania General Assembly had not provided any direction as per the role of approved leaves of absence in determining seniority. However, prior to the hearing of the case by the Commonwealth Court, the Pennsylvania Legislature did add a provision to the Public School Code stating that, "Approved leaves of absence shall not constitute a break in service for purposes of computing seniority for suspension purposes."[34] Although not in effect at the time of the suspension of the plaintiffs, the Commonwealth Court upheld the recent legislation as to its reasoning for affirming the action of the District in including maternity leaves as part of accumulated seniority.

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33. Andresky v. West Allegheny School District, 437 A.2d 1075 (Pa. Cmwlth. 1981).

34. P.L. 465, 24 P.S., Section 11-1125.1(a); referenced in Andresky v. West Allegheny School District, 437 A.2d 1075, 1079 (Pa. Cmwlth. 1981).

In two Pennsylvania cases studied, the validity of adding wartime military service as part of accumulated seniority for teachers was questioned. In James v. Big Beaver Falls Area School District,[35] Paul James sought relief by the Commonwealth Court to regain his teaching position through the removal of a Robert Blythe. While James had more years of teaching experience than Blythe, Blythe had served in Vietnam for two and one-half years and was honorably discharged. Therefore, under the Veterans' Preference Act of Pennsylvania,[36] this military service time was added to Blythe's accumulated seniority, making him senior to James. The Commonwealth Court held, as it did in Northeastern Educational Intermediate Unit No. 19 v. Stephens,[37] that such application of the Pennsylvania Veterans' Preference Act was appropriate for public school employees. Consequently, the Big Beaver Falls Area School District did not err in suspending James before Blythe.

Military service and its application to school employee seniority was also a question raised by plaintiff Duncan in

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35. James v. Big Beaver Falls Area School District, 511 A.2d 900 (Pa. Cmwlth. 1986).

36. 51 Pa. C.S., Section 7107; referenced in James v. Big Beaver Falls Area School District, 511 A.2d 900, 902 (Pa. Cmwlth. 1986).

37. Northeastern Educational Intermediate Unit No. 19 v. Stephens, 510 A.2d 1267 (Pa. Cmwlth. 1986); referenced in James v. Big Beaver Falls Area School District, 511 A.2d 900, 902 (Pa. Cmwlth. 1986).

Rochester Area School Board v. Duncan.[38] As previously mentioned, the Commonwealth Court affirmed the School District's utilization of date of employment as the date for determining teacher seniority. Duncan argued that the addition of military service of employees onto the "front-end" of their date of employment as a teacher was an arbitrary means of determining seniority for employees with military service. Again, the Commonwealth Court did not agree with Duncan's reasoning and stated that such procedures as utilized by the Rochester Area School District were quite reasonable, as long as it was consistently applied to all professional employees with qualifying military service.

The timeliness of certification as related to seniority was a question which had to be answered by the Pennsylvania Supreme Court in Jarrett v. Wattsburg Area School District.[39] Suzanne Jarrett served the Wattsburg Area School District as a guidance counselor. In 1983, due to declining student enrollment, the District discontinued its driver education program. A James Tonks, who had served as driver education teacher was notified that he would be suspended from his teaching position. However, Mr. Tonks informed the District

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38. Rochester Area School Board v. Duncan, 529 A.2d 48 (Pa. Cmwlth. 1987).

39. Jarrett v. Wattsburg Area School District, 533 A.2d 1008 (Pa. 1987).

that in 1976 he had completed the necessary academic requirements for guidance certification, but had never actually applied for the certificate through the Pennsylvania Department of Education. Therefore, under the assumption that Mr. Tonks would be certified in guidance by the beginning of the next school year, he was transferred to the guidance department, and Ms. Jarrett was instead suspended. Ms. Jarrett's suspension became effective with the start of the 1983-1984 school year, and she continued to be paid through the summer of 1983. In July of 1983, Mr. Tonks received his secondary guidance certificate from the Pennsylvania Department of Education. Ms. Jarrett sought relief from the Court of Common Pleas of Erie County, who consequently, reinstated her. The County Court determined that teacher suspensions had to be based on certification(s) possessed at the time of the suspension, not based upon certification areas in which a teacher anticipated future endorsement. Upon appeal from the District, the Commonwealth Court affirmed the lower court's decision. The Supreme Court of Pennsylvania reversed and remanded the case, stating that the consideration of certification areas for purposes of teacher suspension was relative to the effective date of the suspension, not the date of initial notification of pending suspension. As Ms. Jarrett had remained on the Wattsburg Area School District payroll throughout the summer, her date of suspension was the

critical one in determining those senior to her in her certification area. As Mr. Tonks was certified in guidance by the effective date of suspension, the District acted properly in furloughing Ms. Jarrett.

Litigation as a Result of the Pennsylvania Teacher Efficiency Rating System

From 1949 to 1979, a system which combined teacher seniority and performance evaluations was utilized in Pennsylvania to suspend educational employees due to declining student enrollment. Section 1125 of the Pennsylvania Public School Code stated that, "In cases in which suspensions are to be made, professional employees shall be retained on the basis of seniority rights, acquired within the school district of current employment, where no differences in rating are found. Seniority rights shall also prevail where there is no substantial difference in rating. In cases where there are substantial differences in rating of those under consideration for suspension, seniority shall be given consideration in accordance with principles and standards of weighting incorporated in the rating cards ..."[40]

The intention of this rating system was to retain younger teachers whose classroom performance was superior

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40. 24 P.S., Section 11-1125(b); referenced in Fatscher v. Board Of School Directors Of Springfield School District, Springfield, Delaware County, 417 A.2d 287, 290 (Pa. Cmwlth. 1980).

to older teachers who had a substantial amount of seniority, but lesser classroom abilities. However, disagreements regarding the rating system created an overwhelming number of Pennsylvania Court cases. In attempting to determine what constituted a "substantial difference" in performance evaluations, the Supreme Court of Pennsylvania stated in Carmody v. Board Of School Directors Of Riverside School District[41] that, "[because of the difficulties in determining a substantial difference in efficiency ratings] it is not surprising that in 1979 the legislature repealed [the section of the Pennsylvania Public School Code requiring efficiency ratings] and replaced it with a statute that bases the order of suspensions solely on the basis of seniority." [Emphasis original][42] The case at hand resulted in a five to two decision by the Pennsylvania Supreme Court to reverse the decision of the Commonwealth Court, thereby reinstating the order of the Court of Common Pleas of Lackawanna County, which had reinstated the plaintiff teacher. The Superintendent of the Riverside School District determined that an eight-point difference in efficiency ratings was substantial, in his opinion, to suspend the two plaintiff

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41. Carmody v. Board of Directors Of Riverside School District, 453 A.2d 965 (Pa. 1982).

42. Id. at 968.

teachers due to declining student enrollment. The teachers, both having considerable seniority, filed suit claiming that an eight-point difference in efficiency rating was not substantial in order to merit their suspension. The Court of Common Pleas of Lackawanna County obtained testimony from a number of independent educational authorities. Results of their testimony determined sixteen-points to be the lowest number of points deemed substantial by the independent educators to cause suspension of educational employees. Therefore, the County Court ruled that the Riverside Superintendent's use of eight-points was not a "substantial difference" and ordered the teachers reinstated. The Commonwealth Court reversed this decision stating that a "substantial difference" can vary on a case by case basis. As long as the Riverside Superintendent did not act arbitrarily or capriciously (which it determined he did not), the County Court could not determine what was a "substantial difference" on behalf of the Superintendent. The Supreme Court of Pennsylvania determined that the reasoning of the Commonwealth Court was erroneous. As the role of the Court of Common Pleas was to conduct a hearing "de novo" (as per the Pennsylvania Local Agency Law Act[43]), the County Court was not required to review the determinations of the District Superintendent, but was required to

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43. 53 P.S., Section 1133; referenced in Carmody v. Board Of Directors Of Riverside School District, 453 A.2d 965, 969 (Pa. 1982).

make findings of fact and determinations of its own. Therefore, the Supreme Court supported the decision of the Court of Common Pleas of Lackawanna County and ordered the teachers reinstated.

In their dissenting opinion, Justices McDermott and Nix claimed that the right of review did not permit a Court of Common Pleas to redefine the standard of "substantial difference" on a case by case basis. "The Courts [should not] determine on a case by case basis what is a 'substantial difference' and replace the agency's judgement with their judgement under the guise of resolving disputed facts. Obviously, the body charged with designing and administering the rating procedure is best equipped to interpret the significance of the variations in the scores given."[44]

In a less-complicated case, Robert Fatscher in Fatscher v. Board Of School Directors Of Springfield School District, Springfield, Delaware County,[45] claimed that, at the time of his notification of suspension (in February for the following school year), he had not yet received his efficiency rating for the current school year. Fatscher claimed that his suspension was invalid, as the decision to furlough him was not

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44. Carmody v. Board Of Directors Of Riverside School District, 453 A.2d 965, 971 (Pa. 1982).

45. Fatscher v. Board Of School Directors Of Springfield School District, Springfield, Delaware County, 417 A.2d 287 (Pa. Cmwlth. 1980).

based upon his current year's performance evaluation, but on his previous year's efficiency rating. The Commonwealth Court held that performance ratings do not have to be based on a current school year in order to suspend employees, so long as the performance ratings used to determine suspensions were all completed during the same year. (Therefore, the District could not have determined suspensions, in this case in the physical education department, by using some individuals' evaluations from the current school year, and other individuals' evaluations from the previous year. The comparison of evaluations had to occur for all employees utilizing the previous year's efficiency ratings.) In the instant case, the Springfield School District was attempting to inform Fatscher well in advance (February) that he would be suspended for the following school year. Therefore, the District's use of previous year ratings was upheld.

In Stets v. McKeesport Area School District,[46] the plaintiff claimed that the McKeesport Area School District used an unapproved rating form by augmenting the Pennsylvania Department of Education established efficiency rating card. The District, in an attempt to better clarify the broad

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46. Stets v. McKeesport Area School District, 350 A.2d 185 (Pa. Cmwlth. 1975).

categories of satisfactory and unsatisfactory, developed a more detailed numerical system congruent to the state system, thereby rating an employee as outstanding, good, average, needs immediate improvement, or unsatisfactory. The Commonwealth Court ruled that the augmentation of the state evaluation form for purposes of individual professional growth in no way invalidated the DEBE-333. The District had the right to supplement the DEBE-333 for its own uses, so long as the required framework of the form was not altered.

Legal Procedures Regarding Teacher Reduction-in-Force

Three of the court cases reviewed considered legal procedures as related to teacher reduction-in-force. In Andresky v. West Allegheny School District,[47] eleven suspended teachers claimed that their rights to "due process" had been violated, as their suspension hearings were held following the actual date of their suspensions. In attempting to clarify a time frame for due process, the Commonwealth Court quoted Armstrong v. Manzo - "Notice and opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'"[48] As no findings of arbitrary or capricious

47. Andresky v. West Allegheny School District, 437 A.2d 1075 (Pa. Cmwlth. 1981).

48. Armstrong v. Manzo, 380 U.S. 545, 552 (1965); referenced in Andresky v. West Allegheny School District, 437 A.2d 1075, 1078 (Pa. Cmwlth. 1981).

actions on the part of the West Allegheny School Board could be substantiated, the Commonwealth Court was satisfied that the postsuspension hearings did provide the employees an opportunity for due process, even though their actual suspension had already occurred.

Interesting enough, over 2,000 tenured teachers and permanently appointed nurses who were furloughed in Boston were not permitted the right to a hearing by the Boston School Committee.[49] Through its interpretation of the Massachusetts tenure laws, the Supreme Judicial Court of Massachusetts at Suffolk upheld its ruling in a previous case that the hearing provisions of the tenure statutes "do not apply to dismissals based solely on an actual decrease in student enrollment."[50] In suggesting a remedy for educational employees who felt their suspensions were unwarranted, the Court suggested, "Teachers who are aggrieved by an alleged violation of the substantive right provided by this provision may assert their claims through normal judicial proceedings."[51]

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49. Boston Teachers Union, Local 66, v. School Committee of Boston, 434 N.E.2d 1258 (Mass. 1982).

50. Id. at 1269.

51. Id. at 1269.

The Appeal of Cowden[52] also required the Commonwealth Court to determine proper legal procedures for a transferred principal. In this case, the Moon Area School District claimed that it had "demoted" an elementary school principal to classroom teaching. Upon Cowden's petition to the Court of Common Pleas of Allegheny County, the District claimed that the County Court had no jurisdiction to act in the matter, as Section 1131 of the Pennsylvania Public School Code requires that all appeals from school board decisions involving demotions must initially be taken to the Secretary of Education.[53] Cowden argued, and the Court of Common Pleas of Allegheny County likewise concurred, that his return to the classroom was not a demotion, but a realignment of personnel, and therefore, as per the Pennsylvania Local Agency Law,[54] he was entitled to petition the County Court. Upon ruling that the move of the principal had indeed been a "realignment of staff" and not a "demotion", the Court of Common Pleas claimed jurisdiction. The Commonwealth Court of Pennsylvania upheld the lower court's reasoning.

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52. Appeal of Cowden, 486 A.2d 1014 (Pa. Cmwlth. 1984).

53. 24 P.S., Section 11-1131; referenced in Appeal of Cowden, 486 A.2d 1014, 1015 (Pa. Cmwlth. 1984).

54. 2 Pa. C.S., Section 752; referenced in Appeal of Cowden, 486 A.2d 1014, 1015 (Pa. Cmwlth. 1984).

Collective Bargaining Agreements as Related to Teacher Suspension

The role of collective bargaining agreements and their relationship to teacher suspension has been the cause for some litigation. In Platko v. Laurel Highlands School District,[55] the six furloughed teachers claimed that their suspensions constituted a violation of the Collective Bargaining Agreement between the Laurel Highlands School District and the Laurel Highlands Education Association. The appellants contended that their suspensions would increase the teaching load of the remaining employees, and therefore violate a class size provision of the Professional Employee Contract. As the trial court found no evidence to support an increase in class sizes which would violate the Contract, the Commonwealth Court stated, "Our scope of review prohibits us from persuing the matter any further."[56]

A comparative situation in Massachusetts requested the Supreme Judicial Court of that state to determine the validity of a "job security clause" of a collective bargaining agreement.[57] The Boston Teachers Union filed suit against the

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55. Platko v. Laurel Highlands School District, 410 A.2d 960 (Pa. Cmwlth. 1980).

56. Id. at 962.

57. Boston Teachers Union, Local 66, v. School Committee of Boston, 434 N.E.2d 1258 (Mass. 1982).

Boston School Committee when it furloughed 2,261 tenured employees prior to the start of the 1981-1982 school year. The teachers union claimed that the "job security clause" of the Collective Bargaining Agreement was violated by the Boston School Committee, as the clause read, "Any teacher or nurse with tenure or permanently appointed shall continue to be employed."[58] This clause was negotiated to be in effect for the first two years of the three-year contract. The Massachusetts Court declared that the clause was valid during its first year of implementation, as enrollment and fiscal considerations could be determined during the negotiations period for the upcoming school year. However, for the Boston School Committee to bind itself beyond that first year of the contract, through the "job security clause," was an illegal delegation of its administrative duties. The Court stated, "We are of the opinion that a provision in a collective bargaining agreement that attempts to restrict the ability of a school committee to determine on an annual basis the size of its teaching staff intrudes into the area of exclusive managerial prerogative."[59]

As mentioned previously, a collective bargaining provision to notify an employee of his suspension by February

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58. Id. at 1261.

59. Id. at 1267.

of the school year preceeding his suspension was held valid by the Pennsylvania Commonwealth Court.[60] Also provided in the Contract was the understanding that, in order to notify employees by February, suspensions would be based on teacher efficiency ratings from the previous school year. Such system was held valid by the Court, despite appellant Fatscher's contentions that he could not be suspended based on a previous year's performance evaluation.

Similarly, in James v. Big Beaver Falls Area School District,[61] a provision of the Collective Bargaining Agreement between the Big Beaver Falls Area School District and the Big Beaver Falls Area Education Association indicated that, when it became necessary to suspend employees of equal seniority, lots would be drawn. Despite attempts to invalidate the system, the Commonwealth Court affirmed the drawing of lots as long as its implementation was applied in a consistent manner.

The Limited Role of the Judicial System in Teacher Reduction-in-Force

A final area to be considered in this discussion is the role of the judicial system in the suspension of educational

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60. Fatscher v. Board Of School Directors Of Springfield School District, Springfield, Delaware County, 417 A.2d 287 (Pa. Cmwlth. 1980).

61. James v. Big Beaver Falls Area School District, 511 A.2d 900 (Pa. Cmwlth. 1986).

employees due to declining student enrollment. While, as evidenced by the previous material, the courts have been asked to intervene in a variety of disagreements regarding teacher suspensions, under certain circumstances, the courts will not involve themselves in educational decisions.

In the earliest case studied, Jones v. Holes,[62] the Supreme Court of Pennsylvania upheld the suspension of a teacher in an academic area where class enrollments did not merit his employment, dispite the fact that the overall district enrollment had not decreased. In supporting the actions of the Cherry Tree Borough School District, Chief Justice Kephart stated that, "It is the administrative function of the school directors and superintendent to meet changing educational conditions through the creation of new courses, reassignment of teachers, and rearrangement of curriculum."[63] This attitude seems to still prevail among both the Pennsylvania Supreme and Commonwealth Courts.

Likewise, Platko v. Laurel Highlands School District[64] explained that the role of the Commonwealth Court cannot be

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62. Jones v. Holes, 6 A.2d 102 (Pa. 1939).

63. Id. at 104.

64. Platko v. Laurel Highlands School District, 410 A.2d 960 (Pa. Cmwlth. 1980).

to substitute its judgement for that of a school district on educational matters. Its only function is to confirm that substantial evidence exists by which a local board takes action.

Cardonic v. Northern Area Special Purpose Schools[65] served as an example of the Commonwealth Court's refusal to interfere in the educational decision making of the Northern Area Special Purpose Schools consortium. As the Court of Common Pleas of Allegheny County took no additional evidence following Cadonic's hearing with NASPS, the scope of the Commonwealth Court's review was only to determine whether or not the necessary findings of fact made by NASPS were supported by substantial evidence, and that there was no violation of Cadonic's constitutional rights.

Despite what may seem to be a policy of "laissez-faire" regarding the courts and educational decision making, the dissenting justices of the Pennsylvania Supreme Court in Carmody v. Board Of Directors Of Riverside School District[66] expressed their disagreement over the interference of the Pennsylvania Supreme Court in that case in determining what was a "substantial difference" in teacher efficiency ratings.

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65. Cardonic v. Northern Area Special Purpose Schools, 426 A.2d 186 (Pa. Cmwlth. 1981).

66. Carmody v. Board Of Directors Of Riverside School District, 453 A.2d 965 (Pa. 1982).

As previously mentioned, the Court upheld the report of the fact-finders of the Court of Common Pleas in determining that an eight-point difference in efficiency ratings was not substantial. Dissenting Justices McDermott and Nix, basing their views on Regan et al. v. Stoddard et al.,[67] stated that, "It is presumptious to superimpose judicial control upon the exercise of discretion by trained educators who administered the evaluation process within the district."[68] As evidenced by this case, there even seems to be disagreement between justices as per the amount of control the courts should assert in regards to educational decision making.

Finally, the scope of the courts in educational decision making does not include the recall of suspended employees. Among other complaints in Proch v. New Castle Area School District,[69] the appellant contended that the District had ignored the attrition of teachers since his suspension, by not recalling him to work. The Commonwealth Court simply replied, "When to recall suspended teachers is a judgement within the domain of the district, and we cannot substitute our judgement therefore."[70]

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67. Regan et al. v. Stoddard et al., 65 A.2d 240, 242 (Pa. 1949); referenced in Carmody v. Board Of Directors Of Riverside School District, 453 A.2d 965, 971 (Pa. 1982).

68. Carmody v. Board Of Directors Of Riverside School District, 453 A.2d 965, 971 (Pa. 1982).

69. Proch v. New Castle Area School District, 430 A.2d 1034 (Pa. Cmwlth. 1981).

70. Id. at 1036.

SUMMARY AND CONCLUSIONS

In the preceding pages I have investigated the suspension of educational employees due to declining enrollment. The information for the previous analysis and synthesis has been based on twenty court cases relative to one or several aspects within the aforementioned topic.

The courts have been asked to resolve a number of questions related to teacher reduction-in-force. Substantial litgation has raised the question - What indeed constitutes declining enrollment? Likewise, the courts have been asked to differentiate between declining student enrollments or district financial constraints regarding the suspension of educational employees. Procedures for realignment, including teacher-devised realignment plans, and proper determination of seniority, including the role of wartime military service, have all required intervention by the judicial system.

Serious complications because of the inclusion of a rating system into teacher suspension procedures in Pennsylvania from 1949 to 1979 created a substantial number of court cases. On occasion, the courts have also been asked to resolve disagreements concerning legal procedures utilized in the suspension of educational

employees, as well as the validity of collective bargaining agreements concerning teacher reduction-in-force. Many of the cases concerning teacher suspensions due to declining student enrollment have requested the courts to resolve issues of a substantial educational nature. In most instances, the judicial system has refused to act in such a capacity.

The findings and implications of this analysis and synthesis are most important for all involved in the process of public education. Teachers, supervisors, principals, central office personnel, and school board members all need to be aware of the legal ramifications of teacher suspension due to declining student enrollment. Hopefully, the cases discussed in this paper can serve as a basis for familiarizing those in public school education with procedures and policies regarding teacher reduction-in-force.

In particular, the public school superintendent can best serve staff, community, and student needs if a sound legal and education reduction-in-force policy is in place in his/her district. Attempting to create a proactive plan concerning employee suspension will greatly reduce the emotional complexities involved in drafting a policy during a declining enrollment crisis. Avoidance of such

reactionary procedures, through the implementation of a rational, concise, and succinct plan, can only enhance the educational mission of our public schools.

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